

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 653 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 - Yes 2 to 5 - No

JAGANBHAI TETABHAI RATHWA

Versus

MINISTRY OF PANCHAYAT

Appearance:

MR PK HANDA for Petitioner
MR SP HASURKAR for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 03/08/98

ORAL JUDGEMENT

Rule.

2. Heard learned counsel for the parties. The say of the petitioner is that as per his recorded date of birth being 8.12.1939, he could continue in service upto

7.12.199 i.e. till 60 years of age. However, the Taluka Development Officer under communication dated 24.7.1997 informed that when his services were regularised in the year 1979 as per the medical certificate he was 48 years of age, as such his date of birth was calculated as 8.12.1931. However, it was wrongly recorded as 8.12.1939 instead of 8.12.1931. In view of this he ought to have retired on 31.12.1991. This fact came to their notice later on and therefore by the impugned order dated 24.7.1997 the petitioner has been asked to relieve from the services with effect from 25.7.1997. Recovery of the salary of excess period of service has also been ordered.

3. A reply has been filed by the Project Officer-cum-Taluka Development Officer. It is stated that on 7.12.1979 the petitioner was sent for medical examination to the Medical Officer, in-charge Referral Hospital, Chhota Udaipur. As per the medical certificate the petitioner was 48 years of age. Thus the petitioner's date of birth was fixed as 7.12.1931. Though the medical officer has mentioned the age of the petitioner as 48 years on 7.12.1979, the concerned clerk inadvertently recorded the date of birth of the petitioner as 8.12.1939 instead of 8.12.1931. It is also stated that the Director of Pension and Provident Fund has addressed a letter on 24.2.1998 providing the date of retirement of the petitioner as 31.12.1991 and further direction has been given to recover the amount paid to the petitioner during the period 31.12.1991 to 24.7.1997. It is stated that because of the clerical error, the petitioner has worked upto 24.7.1997 otherwise he was due to retire in the month of December, 1991.

4. It is contended by the learned counsel for the petitioner that the recorded date of birth has been changed arbitrarily. It is also submitted that petitioner is entitled to retirement benefit, on the basis of last pay drawn. It is also submitted that order of recovery of salary is illegal as he is not responsible for clerical error. On the other hand Mr. Munshaw, learned counsel for the respondents submits that the petitioner is not entitled to take benefit of clerical error. He is entitled to retirement benefit as salary drawn on the deemed date of retirement on the basis of calculated date of birth i.e. 31.12.1991.

5. I have considered the rival contentions. It clearly appears that there has been a clerical error. It is evident from the medical certificate produced that in the year 1979 petitioner was 48 years old. It also appears from record that petitioner's date of birth on

the basis of medical certificate was calculated as 31.12.1931. In view of this, he will be entitled to retiral benefits, taking the deemed date of retirement as 31.12.1991. However, since the petitioner has worked upto 24.7.1997 on account of mistake of the respondent, no recovery can be effected from him.

6. In view of this, this Special Civil Application is partly allowed and it is directed that while the deeming date of retirement shall be 31.12.1991, his retirement benefit shall be calculated on that basis but there shall be no recovery of the salary for the period 1992 to 1997. The petitioner will be given all his pensionary benefits within a period of three months from the date of receipt of the writ. Rule made partly absolute to the aforesaid extent. No order as to costs.

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